



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 06, 2022

IN THE MATTER OF:

Appeal Board No. 621509

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 621508, 621509, 621510, the claimant appeals from the decisions of the Administrative Law Judge filed February 3, 2022, insofar as they sustained the initial determination holding the claimant ineligible to receive benefits, effective November 13, 2020 through June 27, 2021, on the basis that the claimant was not totally unemployed, as modified to be effective November 23, 2020 through December 20, 2020 and June 6, 2021 through June 27, 2021; sustained the initial determinations charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$900 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and \$1,592 in Pandemic Emergency Unemployment Compensation recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, as modified to be \$1,393 in PEUC;

sustained the initial determination reducing the claimant's right to receive future benefits by zero effective days,

and sustained the initial determination charging a civil penalty of \$373.80 on the basis that the claimant made willful misrepresentations to obtain benefits, as modified pursuant to the decision.

In Appeal Board Nos. 621511, 621512 and 621513, the claimant appeals from the decisions of the Administrative Law Judge filed February 3, 2022, that sustained the initial determinations disqualifying the claimant from receiving benefits, effective July 15, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$2,400 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and \$1,592 in Pandemic Emergency Unemployment Compensation recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$598 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing on all of the issues. The Board is unable to render an informed decision because the hearing held on February 3, 2022 is inaudible and a complete transcript cannot be prepared. The Administrative Law Judge shall confront and reenter into the record Exhibit Nos. 6 and 7, and shall offer parties the opportunity to comment and raise any objection. The Commissioner of Labor shall produce representative, Kenneth Sutherland, who shall testify on the certification process and any other related issues the Administrative Law Judge deems necessary. Additionally, the Judge should confront the claimant with her application for benefits, specifically, her response as it relates to the claimant handbook, and her receipt and review of the handbook. The claimant shall also be confronted and questioned on that portion of the handbook which defines "work". The Administrative Law Judge may take any additional testimony and evidence necessary to decide the case. The Administrative Law Judge shall ensure that each party is provided the opportunity to cross-examine and additional testimony offered, shall confront each party with any document and offer the opportunity for comment on each document and raise any objection to entry into the record.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their

representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER